November 6, 2012

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Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

Re: Docket No. CFPB–2012–0028 or RIN 3170–AA19; [Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z)]; and, Docket No. CFPB–2012–0029 or RIN 3170–AA12 [High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X)]

Dear Ms. Jackson:

On August 23, 2012, the Consumer Financial Protection Bureau's (the "Bureau") proposed Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act and the Truth In Lending Act (hereinafter the "Integrated Disclosure Proposal") was published in the Federal Register. The Integrated Disclosure Proposal, among other things, combines RESPA and TILA disclosures for dwelling secured credit, as mandated by sections 1032, 1098 and 1100A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). Importantly, however, as discussed in more detail below, the Dodd-Frank Act did not provide for or mandate the creation of an "all-in" finance charge under the Truth In Lending Act.

Also, on August 15, 2012, the Consumer Financial Protection Bureau's (the "Bureau") proposed High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (hereinafter the "HOEPA Proposal"), as mandated by sections 1431 through 1433 of the Dodd-Frank Act, was published in the Federal Register. Also importantly, however, as discussed in more detail below, the Dodd-Frank Act did not provide for or mandate the creation or use of an alternative "transaction coverage rate" under the Truth In Lending Act.

Final comments on the Integrated Disclosure and the HOEPA Proposals are due by or before November 6, 2012.[1] Please find the comments of the Texas Manufactured Housing Association (TMHA) in response to portions of the Bureau's Integrated Disclosure and HOEPA Proposals.

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[1] The Bureau determined that an extension of the comment period until November 6, 2012 was appropriate for proposed changes to the definition of the finance charge. This extension applied solely to the proposed changes to the definition of the finance charge. *See* 77 Fed. Regis. 54843 (Sept. 6, 2012). This extension did not apply to the request for comments on effective dates under the Integrated Disclosure Proposal. The Bureau further determined that an extension of the comment period until November 6, 2012 also was appropriate for those portions of the HOEPA Proposal, as proposed under sections 1026.32(a)(1)(I) and (b)(1)(i), regarding whether and how to account for the implications of a more inclusive finance charge under the Integrated Disclosure Proposal on the scope of HOEPA coverage. *See* 77 Fed. Regis. 54844 (Sept. 6, 2012). This extension does not apply to any other aspect of the HOEPA Proposal.

Introduction of the TMHA and Background on Texas-Specific Issues

The TMHA represents over 1,100 manufactured housing professionals in the state of Texas. Members of TMHA include both large, vertically integrated manufacturing, retail and financing companies, medium sized companies and small, so-called "mom and pop" entrepreneurs who own and operate retail locations and manufactured home communities (sometimes called "land-lease communities").

Similar to the statistics for new home-starts for traditional site-built homes, the statistical barometer in the manufactured housing industry is based on new manufactured home shipments and production. Over the past four and one-half years, Texas represents the largest number of manufactured housing shipments per state in the United States.[2] Over the past year, Texas new manufactured home shipments accounted for 16.9 percent of the national market share and 22.7 percent of the nation's production.[3]

There are sixteen (16) manufactured housing factories located in Texas, the most per state in the nation, employing a range of highly skilled workers averaging from 125 to 250 jobs per factory. According to the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, there are 726 active licensed manufactured housing retailers in Texas, and 931 active manufactured housing salesperson licensees.[4]

Overall, there are approximately 9.7 million housing units located in Texas.[5] Of this number, 747,975 are manufactured homes, comprising 7.7 percent of the housing stock in the state in all areas (metropolitan and rural).[6] As noted below, however, and, as to be expected, the percentage of manufactured homes as part of the overall housing stock in rural areas in Texas is much higher than 7.7 percent. Texas has a 64.8 percent homeownership rate, and the median home value is $123,500, with a median household income of $49,646.[7] According to data from the Manufactured Housing Institute (or MHI, the national trade association for the manufactured housing industry), approximately 60 percent of manufactured homes are located in rural areas. Based on information available to us, the percentage of manufactured homes that are located in rural areas in Texas is much higher than 60 percent.[8]

Over thirteen (13.2%) percent of all owner-occupied housing units located in Texas cost less than $50,000, with those homes costing between $50,000 and $99,999 comprising 25.2 percent of the housing units in Texas. In other words, 38.4 percent of owner-occupied housing units in Texas units cost less than $100,000. Approximately twenty-three (22.9 percent) percent of Texas borrowers with have a monthly mortgage payment of less than $1,000. However, 24.1 percent of such persons have monthly housing

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[2] According to Institute for Building Technology and Safety (IBTS), nationally in 2008 Texas represented 13.6% in shipments and 18.3% in production. 2009 Texas represented 14.6% in shipments and 21.3% in production. 2010 Texas represented 16% in shipments and 22.9% in production. 2011 Texas represented 16.9% in shipments and 22.7 in production.

[3] Source: Institute for Building Technology and Safety (IBTS)

[4] Source: Manufactured Housing Division of the Texas Department of Housing and Community Affairs manufactured housing database (http://mhweb.tdhca.state.tx.us/mhweb/main.jsp)

[5] Source: 2010 Census, United States Census Bureau

[6] Source: 2010 Census, United States Census Bureau

[7] Source: 2010 Census, United States Census Bureau

[8] We take note of the Bureau's comment in its HOEPA Proposal that nearly 16 percent of housing units in rural areas are manufactured homes. However, this views the total population of homes (both manufactured and "stick-built") in rural areas, and not the percentage of the total delivery of manufactured homes to rural areas. Nonetheless, we submit that even 16% of the housing stock of rural areas is more than statistically significant, and we further submit that, based upon data available to us, the percentage of manufactured homes as part of the overall housing stock in rural areas of Texas is much higher than 16%.

ownership costs of 35 percent or more of their household income. Compared to the rental market for Texans, 39.9 percent have monthly rental costs of 35 percent or more of their household income. Over fifty (50.2 percent) percent of such persons have a total annual income and benefits of less than $50,000 per year.

Thus, to a great extent, more broadly, the manufactured housing industry serves a lower income, rural and affordable housing segment of the population. As reflected by the information above, this also is the case in Texas.

Summary of Integrated Disclosure Proposal

<u>Applicability</u>

The Bureau's Integrated Disclosure Proposal, if adopted as proposed, would apply to most closed-end consumer mortgages. The rule as proposed, however, does not apply to a mobile home or by a dwelling that is not attached to real property (in other words, land). The proposed rule also does not apply to loans made by a creditor who makes five or fewer mortgages in a year.

<u>Loan Estimate Replaces the GFE</u>

The Loan Estimate form would replace two current disclosure forms: the Good Faith Estimate required under RESPA, and the "early" Truth in Lending disclosure required under the Mortgage Disclosure Improvement Act amendments to TILA. The Integrated Disclosure Proposal provides and the Official Interpretations (on which lenders can rely) contain detailed instructions as to how the Loan Estimate form would be completed. There are sample forms for different types of loan products. The Loan Estimate form also incorporates new disclosures required by Congress under the Dodd-Frank Act.

<u>Timing of Delivery of the Loan Estimate</u>

The lender or broker must give the Loan Estimate to the consumer within three (3) business days after the consumer applies for a mortgage loan. The Integrated Disclosure Proposal contains a specific definition of what constitutes an "application" for these purposes.

<u>Limitation on fees</u>

Consistent with current rules, the lender would be prohibited from charging consumers any fees until the consumer has been provided with a Loan Estimate and the consumer has communicated their intent to proceed with the transaction. A lender, however, may assess a fee to obtain a credit report on the consumer prior to the provision of a Loan Estimate to the consumer.

<u>Early Estimates</u>

The Integrated Disclosure Proposal provides that lenders and brokers may provide consumers with written estimates prior to application. The Integrated Disclosure Proposal would require that any such written estimates contain a disclaimer to prevent confusion with the Loan Estimate form. This disclaimer would not be required for advertisements.

<u>Closing Disclosures Replaces the HUD-1 Settlement Statement</u>

Under the Integrated Disclosure Proposal, the Closing Disclosures would replace the HUD–1 currently required by RESPA, as well as the Truth in Lending disclosures. The Integrated Disclosure Proposal and the Official Interpretations (on which lenders can rely) contain detailed instructions as to how to complete the Closing Disclosures. The Closing Disclosures also contains additional new disclosures required by the Dodd-Frank Act and a detailed accounting of the settlement transaction.

Timing of the Provision of the Closing Disclosures

Under the Integrated Disclosure Proposal, a lender would be required to provide the consumer with the Closing Disclosures at least three business days before the consumer closes on the loan. If changes occur between the time the Closing Disclosures are provided and the closing, the lender must provide the consumer with a new closing disclosure. In these instances, the lender must allow the consumer an additional three business days to review the revised and re-issued Closing Disclosures before closing. However, the proposed rule contains an exception from the three-day requirement for some common changes. These include changes resulting from negotiations between buyer and seller after the final walk-through. There also is an exception for minor changes which result in less than $100 in increased costs. The Bureau seeks comment on whether to permit additional changes without requiring a new three-day period before closing.

Provision of the Closing Disclosure

Under current rules, the settlement agent is required to provide the HUD–1, while lenders are required to provide the revised Truth in Lending disclosure. The Bureau is proposing two alternatives for who is required to provide consumers with the new Closing Disclosures form. Under the first option, the lender would be responsible for delivering the Closing Disclosures form to the consumer. Under the second option, the lender may rely on the settlement agent to provide the form. However, under the second option, the lender would also remain responsible for the accuracy of the form. The Bureau seeks comment as to which alternative is preferable.

Limits on Closing Cost Increases

The Bureau states in the preamble to the Integrated Disclosure Proposal that, similar to existing law, the proposed rule would restrict the circumstances in which consumers can be required to pay more for settlement services, such as appraisals, inspections, etc. as quoted on the Loan Estimate.

Unless an exception applies, as proposed under the Integrated Disclosure Proposal, charges for the following services could not increase: (1) the lender's or mortgage broker's charges for its own services; (2) charges for services provided by an affiliate of the lender or mortgage broker; and (3) charges for services for which the lender or mortgage broker does not permit the consumer to shop. Also unless an exception applies, charges for other services generally could not increase by more than 10 percent.

The rule would provide exceptions, for example, when: (1) The consumer asks for a change; (2) the consumer chooses a service provider that was not identified by the lender; (3) information provided at application was inaccurate or becomes inaccurate; or (4) the Loan Estimate expires.

When an exception applies, the lender generally must provide an updated Loan Estimate form within three business days.

"All-In" APR

The Integrated Disclosure Proposal proposes to redefine the manner in which the Annual Percentage Rate or "APR" is calculated. Under the Integrated Disclosure Proposal, the APR will encompass almost all of the up-front costs of the loan. This will make it easier for consumers to use the APR to compare loans and easier for industry to calculate the APR.

Recordkeeping

The Integrated Disclosure Proposal would require lenders to keep records of the Loan Estimate and Closing Disclosures provided to consumers in a standard electronic format. The Bureau requests comments on whether smaller lenders should be exempt from this requirement.

Effective Dates

The Bureau is seeking comment on when a final Integrated Disclosure rule should be effective. While the Bureau seeks to make it effective as soon as possible, the Bureau understands that the final rule will require lenders, mortgage brokers, and settlement agents to make extensive revisions to their software and to retrain their staff. Further, financial institutions will be required to implement other Dodd-Frank Act provisions, which are subject to separate rulemaking deadlines under the statute and will have separate effective dates. Therefore, the Bureau seeks comments on how much time industry needs to make these changes. The Bureau is proposing to delay compliance with certain new disclosure requirements contained in the Dodd-Frank Act until the Bureau's final rule takes effect.

Comments

With the above Texas state-specific facts as a backdrop, we indicate herein that the Bureau's Integrated Disclosure and HOEPA Proposals, if not revised, will have a severe and adverse impact on Texas consumers, Texas-based small businesses, rural areas of Texas and the Texas economy as a whole.

Overview of Mortgage Market

We note that in its Integrated Disclosure and HOEPA Proposals, the Bureau recites the recent history of the mortgage market, but does not indicate that the manufactured housing industry was part of or a cause of the recent financial crisis. We appreciate that omission, and wish to reiterate here that the manufactured housing industry was not part of the cause of the recent financial crisis, but suffered as a result nonetheless.

Chattel Only Exclusion and Exclusion for Bridge Loans

The Bureau states that so-called chattel-dwelling loans (such as loans secured by manufactured homes) do not involve real property, by definition. The Bureau estimates that approximately one-half of the closing-cost content of the integrated disclosures would not be applicable to such transactions. Such transactions currently are not subject to RESPA and, unlike transactions that involve real property, generally are not consummated with "real estate settlements," which are the basis of RESPA's coverage. Thus, the Bureau notes, were these transactions to be subject to the integrated disclosures under the Integrated Disclosure Proposal, a significant portion of the disclosures' content would be inapplicable. The Bureau states that it plans to address chattel-only manufactured home loans in a future rulemaking. Accordingly, the Bureau proposes to exercise its authority and temporarily exempt so-called chattel-only manufactured home loans from the integrated disclosures until those rulemakings are completed.

We support this exclusion from the Integrated Disclosure Proposal of loans secured by dwellings that are classified as personal property.

However, the Bureau states its belief that multiple-advance construction loans are limited to transactions with real property as collateral, and are not used for dwellings that are personal property. Therefore, for instance, the Bureau proposes to subject all construction loans to the new disclosure content requirements for the Loan Estimate and Closing Disclosures. The Bureau seeks comment, however, on whether any reason remains to preserve comment 18(f)(1)(iv)–2.iii to Regulation Z .

As a further example, proposed commentary clarifies that a loan for the purchase of a home either to be constructed or under construction is considered a construction loan to purchase and build a home for the purposes of providing a revised Loan Estimate. Moreover, proposed rules require the creditor to disclose that the loan is for "Construction." Proposed commentary clarifies that the creditor is required to disclose that the loan is for “construction” both in transactions where the extension of credit is to cover the costs of a construction project only ("construction-only" loan), whether it is a new construction or a renovation project, and in transactions where a multiple advance loan may be permanently financed by the same creditor ("construction-to-permanent" loan).

However, these proposals ignore that, in the manufactured housing industry, a home may be sold as personal property, and may only become real property at some later point in time in the home delivery and installation process. For this reason, we request the Bureau also provide an exclusion from the new integrated disclosure requirements for land/home, staged funded manufactured home loans, even those loans when fully consummated with be secured in whole or in part by real property.

"All-In" Finance Charge and Transaction Coverage Rate

We believe that the Bureau should not adopt its proposal to revise the definition of the finance charge in connection with dwelling secured loans to include most, if not all, non-prepaid interest related closing costs. While the Federal Reserve Board did propose this concept in one of it prior proposed changes to Regulation Z, this change is not mandated by the Dodd-Frank Act, has dire adverse side effects and consequences in other areas and to the mortgage finance industry as a whole.

The introduction of the so-called "all-in" finance charge also has caused the Bureau to propose another measure for determining classification as a high cost home loan under HOEPA, i.e., the so-called "transaction coverage rate" (or "TCR"). Like the "all-in" finance charge concept, the concept of a TCR is not specified or mandated by the Dodd-Frank Act. Indeed, the need to create a TCR derives solely and primarily from the concept of an "all-in" finance charge. However, we do not believe the Bureau has gathered sufficient data to determine the breadth and expansion of loans that would be classified as "high cost home loans" under HOPEA due to the creation of an “all-in" finance charge. Further, in addition to the high-cost home loan determination mentioned above, there are other APR-based triggers used to classify loans for various other purposes in both federal and state legislation and regulation that will be likewise affected, and for which the concept of the TCR will not necessarily apply. Nor do we believe the Bureau has fully and adequately assessed and considered the impact upon small businesses and the impairment on the access to credit for consumers that would occur through the adoption of an "all-in" finance charge, with or without the corresponding adoption a TCR.

Further, changing the finance charge to an "all-in" concept would require lenders to re-program systems, as it would also require lenders to calculate a TCR for high cost test purposes, while also calculating an APR for consumer disclosure purposes. And, unless consumer disclosures are amended to include disclosure of the TCR, it will actually be misleading to consumers as to why the APR appeared to trip various triggers but lenders did not provide the appropriate measures those triggers would suggest should have been required. On the other hand, if both the APR and the TCR are disclosed to consumers, it is likely that widespread confusion will result from the presence of two different "overall cost of the transaction" rates that both differ from the actual simple interest rate itself. While we do not necessarily disagree with the Bureau's assertion that moving to an "all-in" finance charge would simplify the important APR calculation for TILA disclosure purposes, given all else that is going on, and the other massive rulemakings underway, respectfully, we do not believe now is the time to propose other rules not mandated by the Dodd-Frank Act.

Definition of "Application" for Purposes of the Delivery of the Loan Estimate

The Bureau's proposes to define an "application" to consists of the consumer's name, the consumer's income, the consumer's social security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. The Bureau states that this definition does not prevent a creditor from collecting whatever additional information it deems necessary in connection with the request for the extension of credit. However, in the proposed rule it provides that once a creditor has received these six pieces of information, it has an application for purposes of the requirements of Regulation Z.

Respectfully, we believe that the Bureau's proposal to remove a seventh or catchall elements in the definition of what constitutes an "application" for purposes of triggering the requirement to issue a Loan Estimate is both short-sighted and unreasonable. Other items could affect what type of loan estimate an originator would give, in "good faith" to a consumer, including whether the loan carries a fixed or adjustable rate of interest, whether an escrow account will be required or requested, and most importantly, for the manufactured housing industry, whether the consumer is also purchasing and financing real estate with the purchase of home, whether the home will be located upon real estate already owned by the consumer (or a relative of the consumer), or a community, or whether the home will be installed with other components, such as decking and outbuildings, as part of a stage-funded, construction to permanent loan.

We find it particularly ironic and incongruous that the Bureau might consider some "catchall" items to be "proxies" for the "terms" of a loan under its Loan Originator Proposal, but does not recognize that these very same items could affect whether a lender has enough information to issue a Loan Estimate in good faith. In short, one static list of six items does not fit well with every loan application in order to determine whether a lender has enough information to issue a Loan Estimate in good faith. For this reason, the Bureau should <u>not</u> adopt its definition of "application" as proposed under the Integrated Disclosure Proposal, but should consider either adding other and ample elements, or re-inserting the 7th item catchall provision. We believe that because a static list of items will not fit well with every loan application, it is imperative and fundamental that the Bureau add back a 7th item catchall category into the definition of "application" for purposes of triggering the duty of an originator to issue a Loan Estimate in good faith.

Further, we find it problematic that the Integrated Disclosure Proposal would require a lender to provide in the Loan Estimate the type of loan, labeled "Loan Type," offered to the consumer using one of the following terms, as applicable: "Conventional", "FHA", "VA", or "Other." Note, for instance, that the determination of whether a creditor will offer a consumer a Conventional versus an FHA loan may depend upon the amount of verifiable funds a consumer has with which to make a down payment towards the purchase price of the home. This information will not be obtained and verified until sometime well into the processing and underwriting of the loan.

Finally with regard to the definition of "application" under the Integrated Disclosure Proposal, the Bureau should take the time to review its considerations of the definition of "application" under the Integrated Disclosure Proposal and assure that the definition thereunder matches and aligns with the definition of "application" under other enumerated consumer laws and their implementing regulations, particularly the Equal Credit Opportunity Act, and the Home Mortgage Disclosure Act.

Cost of Funds and Total Interest Percentage

While we understand the Dodd-Frank Act specifies the disclosure of a cost of creditor's funds and total interest percentage as part of Title XIV changes to TILA disclosures, we also appreciate that the Bureau is alternatively proposing to use its exemption and modification authority to omit the creditor’s cost of funds disclosure (TILA section 128(a)(17)) and the total interest percentage disclosure (TILA section 128(a)(19)) from both the Loan Estimate and the Closing Disclosure. We fully and wholeheartedly support the Bureau's proposal in this regard because the added increased burden on lenders to track, calculate and disclose these two measures (particularly the cost of creditor's funds) would be unduly burdensome, and we agree with the Bureau's stated concern and conclusion in the Integrated Disclosure Proposal that these added disclosures not only would not provide any meaningful information to consumers, but would only serve to further confuse consumers.

Record Keeping Requirements; Regulatory Flexibility and Section 1022(b)(2) Analysis

The proposal clarifies that the creditor must retain evidence that it performed the required actions as well as made the required disclosures. This includes, for example, evidence that the creditor properly differentiated between affiliated and independent third party settlement service providers for determining good faith, and evidence that the creditor properly documented the reason for revisions under a changed circumstance.

The Bureau proposes to require a creditor to retain evidence of compliance with the disclosure requirements of the Loan Estimate for three years. The Bureau proposes to require a creditor to retain evidence of compliance with the disclosure requirements of the Closing Disclosures and all documents related to such disclosures, for five years after settlement.

The Bureau proposes that a creditor shall retain evidence of the above compliance requirements in electronic, machine readable format. The Bureau believes that XML may be the most appropriate format for electronic recordkeeping. However, the Bureau solicits comment on the costs and challenges associated with adopting an XML format. The Bureau also solicits feedback on other data formats that may be more appropriate than XML.

The Bureau solicits comment on whether a small business exemption is appropriate, whether such small business exemption should be based on entity size or the number of loans originated, and the appropriate exemption threshold in terms of institution size or the number of loans originated, respectively. The Bureau solicits feedback on whether such an exemption for depository institutions should be different than an exemption for non-depository institutions. The Bureau also solicits feedback on small business’ current technology costs, and how such costs might be affected by an electronic recordkeeping requirement.

The Bureau indicates in its Regulatory Flexibility analysis that the record keeping portions of its proposed rule may result in costs to small entities. However, in its section 1022(b)(2) analysis the Bureau estimates that a small fraction of smaller creditors maintain their own compliance software and systems, and would incur costs of roughly $100,000 to update their systems to comply with the proposal.

The Bureau estimates that each loan officer or other loan originator will need to receive two hours of training, and each ten hours of trainee time would require an additional hour of trainer time.

Further, the Bureau notes that to comply with the proposed record retention provisions, creditors may be required to reconfigure existing document production and retention systems. The Bureau estimates that creditors with existing electronic storage systems would need to expend 40 hours of software and IT staff time to develop the ability to export data from existing systems to a standardized format. This would apply to the creditors that maintain their own systems.

Through its various extrapolations, the Bureau estimates that the estimated one-time cost is therefore less than $5.00 per origination.

Respectfully, we believe the Bureau has woefully underestimated the cost to implement the whole of the rule, including in the area that proposes that a creditor retain evidence of the compliance requirements of the integrated disclosures in electronic, machine readable format. We believe the Bureau should start by increasing its base line in some areas by a factor of no less than a multiple of 10, and in other areas perhaps by a multiple of 50 or more.

For instance, based on consultations with several of our smaller depository institution members, we believe that many smaller creditors do maintain their own compliance software and systems, and would incur costs of well in excess of $1,000,000 to update their systems to comply with the proposal. However, please note that this assumes that the Bureau gives clear guidance on exactly what data elements a creditor must maintain in order to evidence compliance with the disclosure requirements of the Closing Disclosures ***and all documents related to such disclosures***, for five years after settlement (emphasis added).

The Bureau asserts that most small creditors do not maintain their own systems. This is based on the Bureau's "discussions" during the small business review panel process. Respectfully, based on our discussions with our financial institutions members, we would disagree that most small creditors do not maintain their own systems. Further, and in any event, the Bureau has not provided adequate data on the cost of third party vendors to update their systems to support small creditors, and the cost of those third party expenses that would be passed on to small creditors, and ultimately the consumer.

Regarding the estimate that each loan officer or other loan originator will need to receive two hours of training regarding the proposal, this also in our view is woefully underestimated, and does not take into account the need and probability for on-going training through clarifications requested and issued during what we believe will be an extended, disruptive and confusing implementation period (see discussion below on *Liability*).

In summary, we do not understand how the Bureau can adequately estimate costs to implement electronic storage when neither the data elements nor the format for electronic recordkeeping have been fully and adequately proposed for review and comment by interested parties. For this reason, among others, as discussed under *Effective Dates* below, we believe the Bureau should first finalize the content timing and implementation of the Affected Title XIV Disclosures with the integrated disclosures, then re-propose the Integrated Disclosure Proposal, and after receiving, reviewing and considering comments thereon, conduct more realistic analysis not only on the costs to comply with this and other rules, but also the impact of this and other rules on the access to credit, small businesses and rural areas.

Closing Agent and Delivery of the Closing Disclosures

Neither TILA nor Regulation Z contain requirements related to settlement agents, but RESPA and Regulation X generally apply to settlement agents with respect to Closing Disclosures requirements. The Bureau proposes two alternatives for the delivery of the Closing Disclosure. Under one alternative the creditor would deliver the closing disclosure, under another the settlement agent would deliver it. However, under the alternative wherein the settlement agent delivers the Closing Disclosure, the Bureau proposes that by assuming this responsibility, the settlement agent becomes responsible for complying with all of the relevant requirements as if it were the creditor. However, the proposal goes on to state that if a settlement agent provides Closing Disclosures in the creditor's place, the creditor remains responsible for ensuring that the requirements for the Closing Disclosures have been satisfied. The creditor does not comply with these requirements if the settlement agent does not provide the disclosures, or if the consumer receives the disclosures later than three business days before consummation.

Further, regarding the proposal that the consumer receive the Closing Disclosures no later than three business days before consummation, we believe this proposal is unworkable and impractical in light of today's practices. If the Closing Disclosures are not provided to the consumer in person, the consumer is presumed to have received the disclosures three business days after they are mailed or delivered. This is a presumption which may be rebutted by providing evidence that the consumer received the disclosures earlier than three business days.

The Bureau solicits feedback regarding whether the proposed rules will create uncertainty regarding compliance. The Bureau also solicits comment on whether the rules should be analogous to the current rule which uses "deem" instead of "presume." We believe that if a creditor can produce a verified delivery confirmation from a recognized third party courier service, such as Fed Ex, that the consumer has received the disclosures, then under such circumstances the consumer should be deemed to have received the Closing Disclosures on the date specified in the confirmation. Further, we believe that, consistent with current rules under RESPA for the delivery of the HUD-1, the consumer should be provided with the Closing Disclosures at least one day prior to closing.

Tolerances

TILA contains tolerances for determining whether an estimated disclosure is accurate. RESPA does not contain tolerances for determining whether an estimated disclosure is accurate. HUD amended Regulation X in 2008, effective January 1, 2010, to provide certain tolerances for determining whether an estimated disclosure is accurate. We point this out because part of the Bureau's conclusion that its proposed changes in the area of tolerances would not be burdensome to industry is that such RESPA tolerances are "already part of the law." Technically, current tolerances under Regulation X are not provided under the RESPA statute, but were created out of whole cloth by HUD as part of the 2010 revised RESPA rule. Further, unlike TILA, statutory liability for Reg. X related tolerance violations currently is not as clear or onerous. The Integrated Disclosure Proposal appears to make a change in this regard, although this also is not entirely clear in the Integrated Disclosure Proposal.

We are particularly concerned about the low tolerance for re-disclosure of the Closing Disclosures of $100. We believe that dollar figure ought to be raised to at least $500 or eliminated altogether. Further, we are concerned about the proposed comment that provides that an actual lender credit provided at the real estate closing that is less than the estimated lender credit provided under the Loan Estimate is an increased charge to the consumer for purposes of determining good faith. However, the proposed commentary goes on to state that if the interest rate is not set when the Loan Estimate is delivered, a valid reason for revision exists when the interest rate is subsequently set, at which point the rule would require the creditor to issue a revised version of the Loan Estimate reflecting the revised interest rate, bona fide discount points, and lender credits.

We note that in some loan programs, such as FHA streamlined refinances, there is a limit on the amount of "cash out" that the lender can pay to the borrower at closing. If a lender has issued what results in an excess credit, and cannot reduce that credit under an integrated disclosure rule when the rate has been locked, this will result in lenders not offering rate locks on FHA streamlined refinances and other such loan programs with similar cash out limitations. We do believe this is neither an intended nor a good result and request that Bureau make an exception in these instances regarding excess credits and allow credits to be reduced in order to comply with such loan program requirements while not violating the good faith standard under the integrated disclosure rule.

Liability

It is not entirely clear to us what civil liability regime is being proposed by the Bureau for integrated disclosure requirements under the Integrated Disclosure Proposal. Currently, there is certain exposure to civil liability under TILA for failure to comply with certain of its provisions. Pertinent sections of RESPA affected by the Integrated Disclosure Proposal currently do not carry exposure to a private right of action. Before a rule can be finalized, and the true cost and impact of such a rule can be assessed, we believe the Bureau needs to be clearer on the very important issue of creditor exposure to civil liability under this proposed rule.

Further, historically, the Board has not issued updates or bulletins to Regulation Z, and the only guidance besides the rule have been the Official Interpretations. As the Bureau notes in the Integrated Disclosure Proposal, creditors can rely upon Official Interpretations in complying with Regulation Z. However, the industry's experience with HUD through the implementation of revised RESPA regulations, after issuance and the effective date thereof in early 2010, demonstrated that, on the one hand informal FAQs were helpful, but on the other, such process further established what we in the industry know – that new rules initially cause a great deal of confusion once lenders and originators begin to actually implement those rules through live operations. In this regard, we believe it would be helpful and prudent for the Bureau to establish, as part of a finalized integrated disclosure rule, a less rigid process than that formerly utilized by the Board in its communications with industry regarding Regulation Z. Under such a process, we request that the Bureau provide the mortgage finance industry with interim guidance in implementing integrated disclosure and other rules, along with the ability to rely on such guidance to demonstrate compliance and as a shield from civil liability or administrative enforcement.

Effective Dates and Implementation

The manufactured housing finance industry is tied to the residential mortgage industry. Any impact, confusion, dis-locations or disruptions in the residential mortgage industry will have a negative impact on the manufactured housing industry. The changes proposed by the Bureau under the Integrated Disclosure Proposal do not have a mandated effective date under the Dodd-Frank Act.

Given the lack of time constraints on finalizing this rule, we believe the Bureau should first finalize the content timing and implementation of the Affected Title XIV Disclosures with the integrated disclosures, then re-propose the Integrated Disclosure Proposal, and after receiving, reviewing and considering comments thereon, conduct more realistic analysis not only on the costs to comply with this and other rules, but also the impact of this and other rules on consumers' access to credit, small businesses and rural areas

Further, once finalized, in the implementation phase and process, we request that the Bureau establish a less rigid process whereby industry can receive interim guidance in implementing integrated disclosure and other rules, and that industry be able to rely on such guidance to demonstrate compliance with the rules and as a shield from civil liability or administrative enforcement.

Conclusion

We appreciate this opportunity to further comment upon the Bureau's Integrated Disclosure and HOEPA Proposals.

Very truly yours,

D.J. Pendleton, J.D.
Executive Director
Texas Manufactured Housing Association